

# **SHARON ZONING BOARD OF APPEALS**

## **MINUTES OF WEDNESDAY, December 21, 2022**

**LOCATION OF MEETING:** In compliance with the Governor's emergency declaration relative to the conduct of public meetings, the Town arranged to conduct board and committee meetings using Zoom video/audio conferencing in an effort to minimize the spread of COVID-19. Interested citizens received directions on how to attend the meeting remotely in the agenda as posted on the ZBA website and the Town. This meeting was presented with the video and/or audio available for later broadcast. The Zoning Board of Appeals is focused on observing the spirit of the Open Meeting Law during this temporary emergency situation to assure accountability for the deliberations and actions of elected and appointed officials conducting the public's business.

A virtual meeting of the Sharon Zoning Board of Appeals was held on Wednesday, December 21, 2022, at 7:00 P.M. The following members were present as established by roll call: Joe Garber, Chair, Hemant Mehta, Arnold Wallenstein, and Michelle Katapodis – Administrative Assistant. Also present for the town was Peter O'Cain, Town Engineer, Dana Hinthorne, Building Inspector, Dick Gelerman, Town Counsel and Thomas Houston of Professional Services Corporation, PC.

Mr. Garber, Chair called the meeting to order at 7:00 PM. Mr. Garber, Chair, read Covid19 protocols per the Governor of MA and procedural ground rules.

### **Case 1907 – 17 Chestnut Street – Record Correction**

Mr. Garber opened the meeting regarding Case 1907 – 17 Chestnut Street regarding typos in the decision. He explained that we can correct the record at our meeting. Mr. Garber made a motion to correct the errors. Ms. Katapodis will make the revisions and send to Mr. Garber to bring to the Town Clerk.

### **Motion:**

Chair made a motion to approve corrections to the decision for Case 1907 – 17 Chestnut Street. Mr. Wallenstein seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Wallenstein, Mehta).

### **Case 1912 – 1200 General Edwards Highway (Four Daughters Compassionate Care)**

Present for the applicant: Attorney Joel Fishman representing Four Daughters Compassionate Care, Angel Madera, General Manager & Mark Gillis, Facilities Manager of 1200 General Edwards Highway.

Mr. Garber informed Mr. Fishman that there has been a formal letter of complaint submitted to Mr. Hinthorne, Building Inspector dated December 13, 2022, by A. Franchi Contractors, Inc. (who own the building next door) Mr. Garber stated that there has been some communication that dates back to September 10, 2021, trying to mitigate the smell that is coming from the building next door and making people ill. Mr. Fishman stated that he realized there were some complaints earlier in the year and it was his understanding that these issues have been addressed. Mr. Fishman stated that a new roof was installed in April for approximately \$25,000 and charcoal filters have been installed to the HVAC system to help mitigate any odors. So, to his knowledge the issues have been resolved. Mr. O'Cain stated that he can share the letter since it was from December 13, 2022. Mr. Fishman wasn't aware of this letter until now. Mr. O'Cain explained the requests and issues noted in the letter and that they were looking for receipts on the work that has been done. He also recommended that some type of environmental air quality testing will have to be done to verify that the air is safe.

Mr. O'Cain explained that since we do have a complaint and we have to address it and with respect to the extension of the Special Permit he will leave it up to the Zoning Board on how it should be handled. Mr. Garber explained that there were several emails attached to the letters. Mr. Garber explained that we can't reauthorize the Special Permit because this is a formal complaint to the Building Department and Board of Health. Mr. O'Cain asked if there is some type of temporary extension we can authorize? Mr. Garber referred that question to Mr. Gelerman. Mr. Fishman stated that as long as they filed the renewal before the expiration, they should be okay. Mr. Gelerman asked when the permit expires. Mr. Fishman explained that there are two different expiration dates. The expiration for the marijuana establishment was December 18, 2022, and for the registered marijuana dispensary is February 1, 2023. Mr. Gelerman expressed that they were out of time on one of them and Mr. Fishman responded that Mr. Gelerman stated in the past that as long as they filed before the expiration date, they were covered. Mr. Gelerman suggested that they continue the case until the next Zoning Board meeting. Mr. Garber let Mr. Fishman know that the next meeting would be January 11, 2023, and that he would have to coordinate with the Building Inspector and the Board of Health.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

Mr. Gelerman wanted to clarify the previous advice that he gave to Mr. Fishman regarding the expiration date filing. He didn't believe that he was giving Mr. Fishman advice on medical marijuana permit, and he wanted to be clear that that he doesn't know what the Cannabis Commission considers late. It was decided to continue the meeting to January 11, 2023

#### **Case 1906 – 299-303 North Main Street – Continued from October 26, 2022**

Present for the applicant: Attorney Michael Khoury representing Trowel Shop Pond, LLC and Yuriy Lande, Owner.

Mr. Garber re-read the legal ad into the record.

Mr. Khoury provide a brief summary of the project. He explained that the Select Board approved the project as 40B eligible in August 2021 and that the State Department of Housing and Community Development issued and eligibility letter in May 2022. Mr. Khoury explained that the project will replace a single-family home and a dilapidated auto repair shop. He then explained that the number of units, their sizes, lot size, etc. Mr. Khoury listed the waivers, special permits, and variances that they are seeking. Mr. Khoury also stated that they have submitted a Traffic Analysis which concluded that there would be insignificant impact. Mr. Khoury offered to go over the traffic analysis, but Mr. Garber explained that Mr. Houston will be presenting his findings and the traffic was part of that report.

Mr. Khoury responded to a question from Mr. Wallenstein from the last meeting and wanted to address it. Mr. Wallenstein asked how the state under 40B measures density. Mr. Khoury did some research and spoke to the state, and they explained that they defer to the towns on appropriate density. That they are concerned with is fairness in allocation and fairness uniformity of size between affordable and market units. Mr. Khoury stated that they believe the density is appropriate for their application.

Mr. Khoury also explained that Mr. Buckley wanted him to highlight that they widened the driveway accessing the property to 22' and added a pedestrian fence around the stormwater basin. Mr. Garber asked Mr. Khoury to repeat the relief that they are looking for. Mr. Khoury read the list detailing the relief that they are requesting. Mr. Garber asked that Mr. Khoury send the list to Ms. Katapodis, and she will forward to Mr. Garber.

Mr. Garber opened the meeting to Mr. Houston so that he can present his report. Mr. Houston explained that they don't have a final report because it was his understanding that this meeting would be held in January. He apologized that they don't have the final report but believes that Mr. Buckley has responded to the key issues. Mr. Houston asked if there were any significant outstanding issues at this point. Mr. O'Cain stated that he spoke to the conservation agent today regarding the deferral of the Notice of Intent and he said that he was ok with that. He suggested that we may want to have a time limit on the filing of the Notice of Intent.

Mr. O'Cain also mentioned that he got a call from an abutter on the southside that are selling the property and there is some concern about screening. The landscape plan shows some proposed hardwoods in the middle which center section of the landscaping plan, but he believes that they are looking for screening along the entire property line and they may want to stay away from the hardwood trees in the center section. Mr. Garber thought that the plan showed a lot of Evergreen trees. Mr. O'Cain recommended that they use evergreens along the property lines, but the type would be important, due to deer in the area. Mr. Houston stated that they are proposing Balsam fir and White spruce, and both are good evergreens for screening. Mr. Houston confirmed that the middle section on the southside had hardwood trees. Mr. O'Cain recommended that they use all evergreen trees on the south side and the people on the north side can work with the developer on to decide what type of trees they want. Mr. O'Cain asked if Mr. Lande has talked to the abutters about what kind of trees that they want. Mr. Lande stated that they haven't talked to the abutters regarding the types of plants that they want. They provided the scheme to the engineers, town, and Mr. Houston but he is ok with providing the evergreens on the south side. Mr. O'Cain suggested that Mr. Lande speak to the people on the north side to discuss what type of plants they want. Mr. Garber stated that this could be a condition in the decision. Mr. Houston suggested that they don't use White pine because they tend to lose the lower branches. Mr. O'Cain suggested no Hemlock. Mr. Houston stated that the two trees that they have proposed are fine. Mr. Khoury wanted to confirm what the condition will be so that he can write it into the decision. Mr. Garber explained that they will have to use all evergreens for the screening on the south side in lieu of the hardwoods and that they need to speak to the abutters regarding with what they would want. It could be a mix of hardwood and evergreens.

Mr. Garber asked if Mr. Houston has any remaining issues and he stated that he did not. Mr. Garber asked Mr. Hinthorne if he had any questions from the building department. Mr. Hinthorne stated that he did not have any questions until he starts reviewing the plans. He will have questions once he starts reviewing the building permit application.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

Mr. Garber opened it to the board members.

Mr. Mehta stated that he read through the materials on the website for this case and nothing stands out as an issue. There are a few areas that some fine -tuning engineering that needs to be done and there are some conditions that we have noted. On the design side there are no major issues as we go along as we see additional details there may be more conditions that we will need to discuss, etc. Mr. Garber stated that we may be able to decide on this project tonight and asked Mr. Wallenstein if he had any comments or questions.

Mr. Wallenstein thanked Mr. Khoury for responding to his question from the last meeting regarding the density. He noted that according to Mr. Khoury's response, it is up to the town. Mr. Wallenstein mentioned that at the last meeting the abutters were concerned with privacy and the density of screening with the trees. He noted that this was addressed tonight. Mr. Wallenstein also talked about the parking and stated that at the last meeting there was some discussion regarding parking should be restricted to one side of the street and asked where that issue stood. Mr. Khoury explained that Mr. Houston suggested that on driveway parking be allowed with the expansion of the roadway from 20 – 22 feet and no parking as designated on one side. He stated he wanted to check with Mr. Buckley regarding the specific changes that were made.

Mr. O'Cain stated that he can address the changes that have been made. They have proposed a guardrail along the roadway, they widened the roadway, a 4' chain link fence in the detention basin, street signage for a stop sign at the intersection, a different water quality unit for the overflow to the town drainage system. Mr. Houston made some comments on water quality unit. Mr. O'Cain said that it's pretty clear- cut subdivision and that it's not huge or overly dense. He did note that the new MBTA recommended zoning density, they are recommending 15 units per acre and stated that in a town with septic systems you won't get 15 per acre. He stated that he's seen on 40B reviews he has seen like 9-20 depending on the site. Mr. Khoury explained that it is 6 acres of developable property outside the wetland. Mr. Wallenstein stated that there was also 6 acres of wetlands.

Mr. Wallenstein mentioned that at the last meeting, Mr. O'Cain asked that there be no action until all of the documents that have to be approved be submitted and reviewed. Mr. O'Cain said that they have been submitted to Mr. Houston, the stormwater issues, and the Notice of Intent. Mr. O'Cain mentioned that the Conservation Commission stated that the Notice of Intent can be submitted at a later date. Mr. Houston stated that the stormwater report was satisfactorily updated.

Mr. Wallenstein inquired about the waiver needed regarding the building within a 100' of the wetland and asked if the Conservation Commission commented on this. Mr. O'Cain stated that a 40B doesn't have to follow local bylaws. Mr. O'Cain said it was his understanding that the conservation agent has reviewed the project and that no actual work can start until the notice of intent is filed. Mr. Wallenstein said that the 40B permit essentially overrides all the town permits. Mr. Gelerman clarified that 40B does not override Conservation Commission and Mr. O'Cain said it also allows not meeting town requirements if it's not proven that it's economically unfeasible to do so. If they can afford to do the project by meeting the requirements, then they are required to do so. Mr. Wallenstein confirmed that the conservation commission will have a chance to look at this and Mr. O'Cain stated that was correct and that they will have to follow notice of intent, which will be written into the ZBA's decision. Mr. Wallenstein was just trying to understand if there would be a conflict if we grant the waiver. Mr. O'Cain stated that he spoke to the conservation agent, and he was fine with the deferral of the notice of intent as long as it's required in the decision as a condition. Mr. Wallenstein asked Mr. Gelerman if we grant a waiver and the conservation commission says no for some reason, is there is a legal conflict? Mr. Gelerman explained that the zoning board doesn't have to make conservation decisions, they can just be silent on it. It doesn't fall within the zoning purview. Mr. Garber stated that we can make a condition that they have to meet all of the requirements of the conservation commission.

Mr. Wallenstein asked Mr. Houston about the issues raised regarding the amount of traffic, particularly taking a left on to North Main Street, will this be an issue. Mr. Houston explained that the trip generation is sufficiently low, and the traffic can be adequately accommodated. When you have a situation when any number of vehicles are trying to take a left out of a private site onto a main street, the vehicle trying to take a left. There will be delays to future project residents but not the town as a whole. The side streets along North Main Street are going to be delayed particularly when taking a left.

Mr. Khoury asked for clarification on the language to add to the decision. He is going to put into the conditions that the board is deferring Conservation Commission relief including the requirement of notice of intent under 3322D. He asked if he should reference any other sections. Mr. Garber stated that the section referenced should be sufficient but if the conservation commission had an issue, they would supersede us.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

Mr. Garber asked if we needed to see the information from Mr. Buckley in order to decide tonight. Mr. Khoury stated that no, all of the issues have been addressed.

Mr. Garber asked if there were any residents or abutters that would like to comment. There were none.

Mr. Garber asked Mr. Gelerman if based on the information presented tonight, can we make a decision tonight. Mr. Gelerman stated that Mr. Houston's written report has not been submitted and he said he would leave it up to Mr. Khoury. But explained that one could make the argument that if an abutter was un-happy you are basing your decision of a written document that was requested but hasn't been received. It's a little bit of a risk and it's not unlawful to do it. Mr. Garber asked if Town Counsel would advise that we wait until we get the report and Mr. Gelerman agreed. Mr. Garber explained to Mr. Khoury that we should continue the case until we get the written report from Mr. Houston. Mr. Lande asked Mr. Houston if he is satisfied with the responses and asked if the reason we aren't going forward is because we don't have the final report? Mr. Garber explained that the standard operation procedure is to have the report filed, to avoid any chance of ending up in land court.

Mr. Garber made a motion to continue the case to January 11, 2023. Ms. Katapodis will send the paperwork.

#### **Motion:**

Chair made a motion to continue Case 1906- 299-303 North Main Street to January 11, 2023. Mr. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

#### **Case 1911 – 144 Old Post Road (Sharon Gallery Phase 2) Continued**

Present for the applicant: Attorney Robert Shelmerdine representing 95 LLC, Matt Smith, Rich Hughes, and Alex Krapasky of Norwood Engineering.

Mr. Shelmerdine introduced himself and explained that this was a continued hearing from November 9, 2022. At that time the applicant and its team made a presentation of the project. This is Phase 2 the residential component and at that time the town had engaged Mr. Houston to do a full and complete review, which has been completed and dated December 15, 2022. Mr. Shelmerdine suggested that Mr. Houston take over at this point to go over his report. He mentioned that it will take some time to go through all of the comments.

Mr. Houston explained that on November 9, 2022, the Applicant, filed with the board for Major Site plan Approval, a special permit, variance, waivers, and such findings, and relief as required to allow the construction of 156 residential units on Lot 3. He went on to explain that the project overall is being developed in three phases and the first phase has been approved by the board on November 17, 2021, Phase 2 is what is before the board tonight and Phase 3 is anticipated to be retail buildings on Lot 1. The zoning is Business District D and this zoning was specifically created to require the development of a mixed use. This is consistent with the plans for this project. In terms of Lot 3 it's a 156 residential units on approximately 7 acres. Residences are allowed in Business District D by right, subject to the requirement to provide affordable housing units. In this instance 12.5% of the total 180 units on the property must be 23 affordable units. The applicant has planned to provide all affordable units on Building F Lot 1, a total of 24 units, which is higher than the minimum. The recommended condition of approval for Lot 3 is that the Certificates of Occupancy for dwelling units on Lot 3, shall be subject to the schedule set forth in the bylaw. The schedule provides a certain amount of the affordable units to be available before the occupancy certificates being issued for non-affordable units. However, all of the affordable units are in Building F on Lot 1, have to be completed and occupiable before all of the occupancy permits are issued for Lot 3.

Mr. Houston highlighted some of the comments:

1. The bylaw requires that the buildings be four sided. This is an architectural term, meaning that there be, fenestration, architectural details, materials, colors and finishes for each building type. What has been submitted to date is really only floor plans, so we don't have the information to evaluate if the buildings are four sided. We need more detailed architectural plans.
2. The plans also need to show some designated loaded areas. These aren't commercial buildings, but you do need loading areas to accommodate move ins and move outs and as of right now, there is nothing shown on the plans.
3. Echoes the language of the bylaw. We need the discussion on how best commercial efforts have been used to incorporate the green development principles of energy efficiency and sustainability. This is a narrative that the board needs to look at to determine compliance with the by law.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

4. We need a preliminary parking management plan. There are plenty of parking spaces, but we need a plan to state who has the right to use what spaces under what circumstances. A plan that will guide how the spaces in the property will be used.
5. Modify the design of Lot 3, so that it functions as a walkable site. We need a walkway to the front door to every building and to the other lots of the other buildings.
6. We need an irrigation management plan, one of the issues is that the bylaw prohibits the use of potable water for irrigation. We need a plan to tell us how the applicant will irrigate the landscape materials that they provide.
7. Provide on-site bicycle racks.
8. Provide directional signage for people in vehicles.
9. We need a plan of the landscape and hardscape areas that surround the pool and the clubhouse buildings and the three adjacent building. Right now, this is a blank area on the plan. There is no detail on the plan of how these areas will comply with the bylaw in terms of open space.
10. We need additional detail on the lighting, heights of the poles and how they will be controlled. Confirming that there will be no point source of light visible to the resident adjacent to Old Post Road.

Mr. Houston skipped ahead to comments 14 & 15. The Sharon Gallery is dependent upon an off-site sewer connection. We are asking for an update on where the sewer authorization and sewer construction is at this juncture to make sure it is going to be ready for when the units on Lot 3 are going to be ready for occupancy.

14. Update the construction status of the sanitary force main and gravity sewer line from the Project Site to the point of connection to the existing Foxboro sanitary sewer system.
15. Update the permit status of all requisite authorization for access and acceptance of wastewater for treatment by the Mansfield Foxboro Norton Regional Wastewater Facility in Norton.

Mr. Houston moved to comment 17 which asks for an update on the MassDOT approval of all of the intersection improvements along South Main Street in front of the site. Corresponding to this, is comment 18 which asks for an update of the design of these improvements.

17. Provide an update on the MassDOT permit approval for the South Main Street reconstruction and signalization improvements.
18. Provide an update of the design status of all South Main Street intersection improvement designs.

Mr. Garber asked Mr. Gelerman if the pending litigation is addressing the MassDOT issues. Mr. Gelerman stated that a filing was made for a continuance of the trial which is set to January 10<sup>th</sup>. Mr. Garber just wanted to know if that addresses comments 17 & 18. Mr. Gelerman confirmed that the issue of the permit is subject to the court case being successfully concluded.

Mr. O'Cain stated that the signalization plan has been reviewed by the MassDOT project manager and they are waiting for this litigation to be finalized so that they don't approve a project that is not going to be legally possible in the future. Mr. O'Cain also stated that the sewer line has been installed all the way from the site to the existing pumping station on Gavin's Pond Road. The component that hasn't been installed is the pumping station on the Gallery site and the piping from the proposed building to the pumping station. Everything from the site to Foxboro is in. Mr. Houston acknowledged that this information is helpful to understand these issues.

Mr. Houston moved onto comment 19 & 20 which is looking for information on the rooftop mechanical equipment and its screening and we are also looking for some commentary from an acoustical engineer or similar person to whether the equipment that is being proposed is capable of being restricted to the sound level of the bylaw. We are recommending as a condition of approval that an acoustical engineer go out and measure the sound levels just to make sure that the design sound levels are met by the equipment and if any adjustments are required.

19. Provide information on rooftop mechanical equipment and related screening.
20. Provide an updated analysis by an acoustical engineer or scientist projecting sound levels at the property line that include sound from specified rooftop mechanical equipment. The study should particularly quantify noise for sensitive receptors (residences) along Old Post Road.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

Mr. Houston explained that on comment 21 they have some detailed comments as to how the zoning table is presented on the drawings and that they are looking for revisions on certain aspects of the zoning table. In comment 22, they want to add to the zoning table that there is a restriction to 2 bedrooms per dwelling unit in this development. It is an important zoning issue and it doesn't appear on the zoning table.

21. Reorganize the "Zoning Requirements Business D District" table showing for each requirement, the specification for the overall Development Project (required) and the Development Project (provided), Lot 3 (required), and Lot 3 (provided).
  - a. For Lot 3, add minimum lot area (60,000 sq.-ft. required/308,317 sq.-ft. provided) (ZBL §2460. b).
  - b. For Lot 3, add maximum lot coverage "required" as "N/A" and calculate the coverage "provided" (ZBL §2464. b).
  - c. For Lot 3, add minimum open space "required" as "N/A" and calculate the coverage "provided" (ZBL §2464. c).
  - d. The landscape strip along Old Post Road should be shown as 0-ft. for the Development Project but as 25-ft.± for Lot 3 (ZBL §2465. B(1)).

The Zoning Bylaw limits bedrooms in Business District D to "...a maximum of two bedrooms per dwelling unit" (ZBL §2462 b(2)). The limitation on bedrooms should be shown in the "Zoning Requirements Business D District" Table on the "Lot 3 Site Layout" sheet 4 and on the Architectural Plans.

22. Add the restriction that a maximum of 2 bedrooms per dwelling unit is permitted to the zoning table (sheet 4) and to the architectural plans.

Regarding comments 23 & 24, there are 2 ways that the permitted number of dwelling units in this development are calculated. The maximum number of dwelling units in Business District D is the lesser of (i) 225 units, or (ii) 1 dwelling unit per 2,250 square feet of gross floor area commercial space. ZBL 2462(b). The idea here during the adoption of the zoning, people were concerned that the residential might overwhelm the extent of the commercial development on the site and it is designed to keep the balance. This ratio of floor area of commercial space that actually limits the number of dwelling units on Lot 3 to 118 but the current development proposed 156. There are 38 more dwelling units on the current proposal than are allowed by the bylaw unless relief is granted. This balance between commercial and residential may affect the financial implications to the town. Comment 24 requests an updated financial analysis.

23. A variance is required to allow 156 dwelling units on Lot 3.
24. Update the project financial analysis to reflect 156 dwelling units.

Comment 25 examines the 10' separation required between buildings. The plan submitted looks like it's about 6-7' and maybe the intent was to provide the 10' and we are asking them either dimension that or seek relief. Mr. Houston explained that when they analyzed this on comment 26, the underground parking garage come well within 10' of the adjacent building. But our interpretation of the bylaw is that the garage doesn't have to abide by the bylaw.

25. Show the separation between Buildings A and B and between Buildings D and B on the plans and seek relief if required.
26. Confirm that the parking garages are entirely below grade and no element of these structures is visible at the surface.

Mr. Houston explained that Comment 27 is asking for a determination of the building height in terms of feet and stories. We really can't check that at this time because the architectural plans don't show elevations.

27. For building height:
  - a. Provide the building height in feet and stories.
  - b. Document the determination of height including depicting the ground plane.

In comment 28, we have asked for a verification of the square foot of the building. It looks like the residential floor area is in excess of 250,000 sq. ft. of the allowable square footage in the bylaw.

28. For the proposed gross floor area:
  - a. Provide calculations for gross floor area
  - b. A variance is required for residential gross floor area exceeding 250,000 sq. ft.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

Comments 29 & 30 there is supposed to be a no cut buffer strip along South Walpole Street to preserve the residential character. There is supposed to be a cedar board fence and some underplanting of some trees. Right now the trees don't provide much screening, you are supposed to underplant those trees with shrubs and other screening elements. Neither the fencing nor the additional planting is addressed on the current plan.

29. Provide a plan showing the location and construction details for an unfinished cedar board fence within the 50-ft. buffer strip along South Walpole St.
30. Provide for planting of evergreen trees and shrubs depicting size at the time of planting and at maturity:
  - e. Provide a plan showing existing 2-inch + caliper trees and the location, species/variety, and size of proposed evergreen tree and shrub plantings or alternatively;
  - f. Stake out evergreen tree and shrub planting locations for inspection prior to Decision.

Comments 31, 32 & 33 relate to the applicants request for relief to provide underdrains. Mr. Houston explained that what has been done on other sites, is that the underdrains have been allowed but it's a requirement to recharge the intercepted groundwater on the site. We would want to see some infiltration structures on the site, to address the environmental issues.

31. A Special Permit for Lot 3 is required and applied for authorizing underdrains for retaining walls and foundations as applicable.
32. Calculate the volume of groundwater intercepted.
33. Provide and infiltration structure at each underdrain location to infiltrate intercepted runoff.

Comment 34, a special permit is required on Lot 3 because the impervious materials coverage exceeds 15%. The only requirement to satisfy the special permit criteria, is to provide an on-site facility to recharge in its entirety the 1-year storm event. The applicant has gone above and beyond and they are recharging in the 2-year storm event and meets the requirements for issuance of the permits.

34. A Special Permit for Lot 3 is required and applied for authorizing impervious materials coverage exceeding 15% of the lot area. The submitted stormwater management systems provide for infiltration of the 1-year frequency storm event.

Mr. Houston gave an overview of the Stormwater Standards in Massachusetts and discussed the previously approved Lots 1 & 2, which is detailed in the report. He explained that the rates are lower than the 2016 rates and the current development is well below the threshold of the 2016 approval. Standard 6 relates to critical areas because this is a DEP Zone II and one of the DEP requirements is you are supposed to look at source control. We have provided two recommendations.

Standard 6: Critical Areas. Lot 3 lies entirely within a DEP Zone II which is categorized as a critical area. The entirety of Lot 2 also lies within the Town's Groundwater Protection District.

Source controls should include a prohibition on road salt and limitations on fertilizer application.

36. Provide source controls that include:
  - a. A prohibition on road salt.
  - b. A turf and landscape management plan involving minimal applications of fertilizer, pesticides, herbicides, and fungicides

Mr. Houston also talked about Roofwater Infiltration facility and explained that all of the roof water on all of the buildings on Lot 3, is directed to single infiltration facility, that is intended to recharge all of the roof water on Lot 3. This is highly desirable from an environmental standpoint because roof water is clean. The issue here is that the design exfiltration rate used is a too high. That means the actual design infiltration rate, which is yet to be determined, if its lower than the facility has to be enlarged. What was used was an infiltration rate of 87.4. DEP has a very stringent protocol if you are going to establish your own infiltration rate. The highest is 8.27 inches per hour and the applicant is proposing to use about 10 times that. Its fine but you have to do multiple tests and we have set forth a testing protocol. Comments 38 – 41 relate to this.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

Comment 42 explains that the TSS removal rate needs to be adjusted because there is a flow rate conversion and the data that was used isn't consistent and needs to be checked against the criteria.

42. Revise the TSS removal calculation for the Lot 3 treatment train as required.

Comments 45 - 47 focuses on erosion control and right now the erosion control is focused on the perimeter of the site. We are going to hold any erosion material on the site. For a site this large it is not good practice to clear the whole site at once. We are asking them to do a phased development plan.

45. Add the requirement that a detailed sequence of work shall be submitted to the Town Engineer prior to construction showing work zones within which the surface must be stabilized before disturbing other work zones.
46. Add the requirement that erosion controls be provided including perimeter erosion controls for each of the above work zones.
47. Provide sediment traps for each work zone as appropriate sized to provide storage for the volume of runoff from the 2-year frequency storm event or to provide storage of 3,600 cu.-ft. per acre.

Comment 48 we would like to add a requirement that no area be left disturbed for more than 10 consecutive days.

48. Add the requirement that no area shall be left disturbed and un-stabilized for more than 10 days.

Comments 51-53 asking for special erosion controls for the steep embankment on the west side.

51. For the steep slope along the west site boundary adjacent to Lot 2:
52. Add a diversion channel and an erosion control silt fence at the top of slope for the slope.
53. Add a detail and requirement for erosion control blankets and provide specifications and installation requirements of the erosion control blankets.

Mr. Houston stated that comment 56 addresses fugitive dust and that it should be controlled with the application of clean water.

56. Add the requirement to suppress dust through application of clean water.

And this is followed by an Operation and Maintenance Plan with the following recommendations:

- Recommended Condition of Approval: That all downgradient components of the overall Sharon Gallery stormwater management system that carry runoff from Lot 3 must be installed and operational prior to issuance of any Certificate of Occupancy for Lot 3.

The next comments relate to Site Planning. Comment 62 asks for a list of off-site and on-site improvements.

62. Provide a list of improvements within the Sharon Gallery site on Lots 1 and 2 and outside the Sharon Gallery site that must be completed prior to construction and prior to occupancy and review these requirements with the Board.

Comment 63 states that we need a better definition of how the space around the pool and clubhouse will be developed in terms of planning, site furnishings, etc. We need to provide accessible routes, as mentioned in Comment 64. We need walkways connecting all the principal doorways, through the site and onto the adjacent sites. Mr. Garber mentioned that there was some discussion as far as the accessibility at the main entrance, that the residents would have their own entry going into that area rather than have to go through the same entrance as Costco. Mr. Houston explained that the vehicle entrance to this site is a short distance from Old Post Road, but it does use a couple of hundred feet of the driveway to Costco. Mr. Garber asked if that raised any impending issues regarding traffic. Mr. Houston stated that not in terms of traffic, but they did raise the issue on that there needs to be a detailed property owners' association document that provides for the funding of operation and maintenance of the roads, the utilities and storm water management system. It also needs to be accompanied by easements which gives the rights to each property owner the right to do work on the adjacent property. Mr. Garber asked if that is something we would have to consider in the decision.

Mr. Houston explained that in Comment 65, they are going to need an onsite well. We would like them to pick a place for the well that is far enough away from any wetlands. Generally, Lot 3 is pretty far from the wetlands so it shouldn't be a problem.



# **SHARON ZONING BOARD OF APPEALS**

## **MINUTES OF WEDNESDAY, December 21, 2022**

63. Define the pedestrian space surrounding the club house and pool including hardscape, plantings, site furnishings, and pedestrian amenities.
64. Provide “accessible routes” and continuous pedestrian access extending from the site entrances at the south edge of the site.
65. Plan,” sheet 5 for coordination.

Comment No. 69, there was verbal testimony not formal calculations during the prior approval that this was a balanced site. Looking at the plans it looks like they are generating a lot of cut, so we just want verification that the prior statements still remain correct.

69. Verify the continuing validity of the information provided during the Phase 1 review process, that the overall project is a “balanced site” and import of fill or export of cut will not be required.

Comment 70 asks for a plan of procedures to minimize noise during construction. There are some residential properties along adjacent segments of Old Post Road.

Comment 71 is this issue of recharging the groundwater from the underdrains.

Comment 72 currently there are no trash dumpsters or recycling dumpsters/compactors. There aren’t any provisions for waste collection or recycling on the properties. It needs to be accommodated in some manner.

72. Provide for trash collection and recycling:
  - a. Show trash dumpsters/compactors and recycling dumpsters locations
  - b. Provide pad details
  - c. Provide enclosure details.

Comment 73 is the Property Owners Association document that we discussed, and Comment 74 is regarding the easements that were discussed as well.

Mr. Houston explained that in terms of the water distribution system, Comment 77 states that would like some line valves to be added such that each of the buildings on Lot 3 can be fed from 2 different directions. Comment No. 78 adding some fire hydrants on Lot 3.

77. Provide on-site line valves such that each building is fed from two directions.
78. Provide on-site hydrants in compliance with Fire Department requirements. See Comment 86

Comment 82 We need separators, structures required in the parking garages to clean up the water that drips off the cars before it’s discharged.

Comment 83 is regarding accessibility. There doesn’t appear to be an accessible entrance on the south side of the site. It appears the only access is up a large flight of stairs. This needs to be addressed in some manner.

Mr. Houston stated that there were several concerns regarding fire protection. Comment 84 states that they obtain fire department approval of the site. Comment 85 explains that they also need the fire departments approval for access by apparatus to the parking garage. Comment 86 mentions fire hydrants again. Comment 87 requires the fire departments approval of a fire suppression system for the parking garages. This is something that the fire department needs to provide input on.

Comment 89 talks about the draft parking management plan that was mentioned.

Comment 91 need some directional and wayfinding signage.

Comment 92 – that steep slope on the west side of the site. There are several parking spacing heading in perpendicular to that so they need a guardrail.

## **SHARON ZONING BOARD OF APPEALS**

### **MINUTES OF WEDNESDAY, December 21, 2022**

Mr. Houston went on to explain that Bayside Engineering did a detailed update of the traffic study of the overall project, and it fundamentally answers all of the questions. The study area is clearly sufficient to identify the impacts, it goes all the way down to Cobb Corner in Canton. Mr. Garber asked if the two lane road (one way in and one way out) on Old Post Road, will be sufficient to accommodate the traffic. Mr. Houston stated that typically the roadway sections don't bog down, it's the intersections that bog down. Mr. Houston stated that he anticipates that it would be okay, but he will take a look at it just to make sure. He doubts they will need additional lanes.

Mr. Houston stated that the applicant looked at crash data and that they looked at it all the way North and South Main Street up to Cobb Corner. There was only one intersection that had a higher crash rate. That was North Main Street and Cheryl Drive, however only 11% of the traffic from this project impact that intersection. Mr. Houston mentioned that the trip generation was done correctly.

Comment 93, the current analysis only projects traffic for phases 1 & 2 of the project but it doesn't include the traffic in the remaining buildings on Lot 3, so we asked them to do another iteration for the full build out of Lots 1, 2 & 3. All of the intersections near the project are being reconstructed and they will all function at desirable levels of service.

Comment 94 we asked them to update the Board on the status of negotiations with the Town of Sharon regarding responsibility for installation of signalization improvements at the Wolomolopoag St./South Main Street Intersection. We need to iron out who will be responsible for this.

Mr. Houston explained that he assembled the calculations made by Bayside Engineering into a table which makes it easier to understand. He went on to explain the table and the potential delays due to the project. He explained that the unsignalized intersections may cause delays. South Walpole Street is measurably increased because it's unsignalized and trying to take a left will be delayed.

Mr. Houston concluded his presentation and Mr. Garber opened the comments to the board members.

Mr. Mehta stated that the report was exceptionally well prepared and congratulated Mr. Houston and his team. He explained that typically we find this level of details/reviews on a detailed design document. This report went beyond in assessing current and future needs that helps us to review and convey to the design engineering team what our expectations are. Mr. Mehta stated that when the design engineer replies to these comments, some will be addressed "we will comply" and some high-level comments need to be addressed right now. Every single comment will definitely be conditional for the approval. The comments are implementable and nothing extraordinary has been asked. The majority of the safety issues are addressed, the stormwater related comments and site management comments are good. Some traffic studies will have to be done, specifically the issue that Mr. Garber addressed about the accessibility. In general, he doesn't see any major issues.

Mr. Wallenstein stated that the report was very good, comprehensive and thorough and he wanted to highlight three areas of concern. The first is the calculation of the what the permissible number of residential units are 118 vs. 156 and I will leave it to you and the proponent to figure out what is the correct calculation. The second is the water infiltration rate and the mechanics of how and the amount of flow and I think the wells are important to have on site. Mr. Wallenstein went on to the third area of concern, which is much more of a concern, is the traffic. He explained that he has personally experienced the amount of traffic on South Main Street daily and it can be brutal. Mr. Houston stated that it's pretty quiet during both rush hours. Mr. Wallenstein stated that he is a little skeptical since he feels the project will generate a lot of traffic and will make delays worse.

Mr. O'Cain commented on the two-way lane issue and stated that the sidewalk and roadway are already constructed and to widen the roadway to two lanes would be impossible. There's no right of way because of the cranberry bogs and it's an approved plan by the Select Board as a separate project and to revisit that at this point isn't fair to the applicant. Mr. Garber asked if he knew how we got to this plan, since the original plan was two in and two out. Mr. O'Cain said that to his recollection it was originally a two in and two out lane but there were a lot of restrictions due to wetland, etc. . He stated that the approval was giving to the owners of what is now The Point and at that time it was the Sharon Residences. The approval was for them to construct the roadway and at some point, the Select Board agreed to reduce it down to one lane. Mr. Houston stated that he wouldn't anticipate that there would be a capacity problem with one lane in and one lane out, but he would take a look at it.

Mr. Khoury had a few comments about the roadway, and he stated that he was speaking on behalf of Old Post Road Holdings which is the owner of 145 Old Post Road. Mr. Garber asked if that was the house just past the point on the right and Mr. Khoury confirmed that it was. Mr. Khoury wanted to set the record straight that back in 2015 there was some discussion between the

## **SHARON ZONING BOARD OF APPEALS MINUTES OF WEDNESDAY, December 21, 2022**

developer and Old Post Road regarding Old Post Residences assistance with the roadway necessary to maintain the commercial structure because it would be shared, but an agreement was never reached. There were two memorandums that reached with the Selectman to the extent that the residences alone were under construction, and they were way ahead in terms of timing of the commercial development. It was determined that a country club road would be sufficient and that is what was built. Mr. Khoury explained that since 2016 there have been numerous promises from the commercial developer to get a roadway done, in fact as late as January or February of this year. The developer promised to have the roadway done by November of this year. Mr. Khoury explained that understanding that a lot of money is going into the project, and it is going to benefit the town the roadway is critical to the abutters, and it's been 4 years of promises. Mr. Khoury had a memorandum from CHA, the engineer for Old Post Road Holdings as well as the apartment complex. The memo is pointing out deficiencies and issues, the first one being the signalization which has been gone over at length. Mr. Khoury wanted this memo to be on the record and stated that it's really important that this roadway get completed. The sidewalk work on the west side of Old Post Road on the Sharon Gallery side has not been finished and the existing sidewalk stops 1500 feet short. Mr. O'Cain stated that we have discussed these issues before and that we have no control over the signalization plan and he thought that we had discussed having the completion of the roadway and sidewalk as part of the approval of this project. Mr. Garber confirmed that we did discuss these at a meeting we had a few weeks back. He explained that a few issues were raised and we were hoping to get some answers tonight. The street lights aren't working due to some work being done on a transformer, there were supposed to be guardrails because there are drop offs on the right side of the road, the left side is still temporary fencing because of the drop off but there's supposed to be guardrails. Mr. Garber asked Mr. Hinthorne and Mr. O'Cain if he missed anything. Mr. Hinthorne stated it was the sidewalk, the lighting, the roadway cul-de-sac area and the guardrails in multiple spots and hopefully we will be getting answers tonight.

Mr. Khoury stated that the paving and curbing near the cul-de-sac area still hasn't been done and the existing paved entrance leading to 145 Old Post Road is extremely difficult to access due to the steep slope and unstable embankment. Also, there are no sediment or erosion measures have been implemented to protect the property at 145 Old Post Road, the multiple draining structures, frames and grates are constructed 6-8" above the adjacent grade and do not function properly since the water can't make it into the inlet grates. These raised structures present dangerous driving conditions on Old Post Road, the developer or its engineers should indicate whether the current Old Post Road conditions present flooding or sediment impacts on adjacent properties, as well as address safety concerns due to the raised structures. There are multiple sections on the South end and North end of Old Post Road that have not been constructed due to the full approved width of Old Post, leaving most areas with exposed and unstable soils. The current paved sections of Old Post Road have not been finished with asphalt, the landscape areas have yet to be planted and stabilized and multiple entrances are confusing to motorists which can present a dangerous and unsafe situation, especially at night. Mr. Khoury wanted to make it clear that there are numerous problems with Old Post Road with the delays and construction of the road. Mr. Garber asked Mr. Khoury to forward the memo to Ms. Katapodis and she will forward to the board members. Mr. O'Cain had some issues with a few of these comments.

Mr. Garber turned the meeting over to Mr. Shelmerdine. Mr. Shelmerdine apologized for not addressing the issues from the last hearing and that he wasn't aware that he was supposed to address these tonight. He will follow up and get on these issues first thing tomorrow and be in discussion with Mr. O'Cain and Mr. Hinthorne to see what we can do to address the safety concerns that the Town had. Mr. Shelmerdine explained that this a project that has been stopped due to pending litigation and that has taken a lot of effort and energy. He isn't aware of any obligation that the developer has to the project on the other side of the street to address the traffic issues. Mr. Shelmerdine pointed out that the permit issued by the ZBA for 135 Old Post Road, dated July 22, 2015, had some conditions addressed what that owner needed to do on roadway. I can't tell you if it addresses specific concerns raised tonight or any of the concerns in the memo by CHA. He asked if he could receive a copy of the memo. Mr. Khoury stated he would forward it to Mr. Shelmerdine and would also send a copy of the 2015 if he would like. Mr. Shelmerdine stated at this point he could speak to Mr. Khoury tomorrow. Mr. O'Cain stated that he has been at several meetings over the past 5 years, and this is not a new topic. Mr. Shelmerdine stated he would speak to Mr. O'Cain to address the safety concerns. Mr. Shelmerdine stated that he would be requesting a continuance and asked if Norwood Engineering had any comments. Norwood Engineering stated that they would need 3-4 weeks to address the comments in Mr. Houston's report.

Mr. Garber asked if February was in their timeline. Mr. Shelmerdine asked what dates are available in February. Ms. Katapodis stated February 8<sup>th</sup> or the 22<sup>nd</sup>. Mr. Smith stated that we would need to build Mr. Houston's time in this. Mr. Shelmerdine stated that February 22<sup>nd</sup> will work. Mr. Shelmerdine also mentioned that according to Mr. Houston's report, he may have to apply for another variance on the unit count.

### **Motion:**

Chair made a motion to continue Case 1911 – 144 Old Post Road (Sharon Gallery Phase 2) to February 22, 2023. Mr. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

# **SHARON ZONING BOARD OF APPEALS**

## **MINUTES OF WEDNESDAY, December 21, 2022**

### **MINUTES**

October 26, 2022

#### **Motion:**

Chair made a motion to approve minutes from October 26, 2022. Mr. Wallenstein seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

Mr. Garber spoke to the board members regarding Executive Session scheduled for January 4<sup>th</sup> to review interrogatories regarding Phase 1 for the Sharon Gallery project to ensure that they are correct and accurate.

The meeting adjourned.

Respectfully submitted